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15 Medical Group, and  
Willows Consulting Company  
16

17 UNITED STATES DISTRICT COURT

18 SOUTHERN DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,

20 Plaintiff,

21 vs.

22 RONALD GRUSD,  
23 CALIFORNIA IMAGING NETWORK  
24 MEDICAL GROUP,  
WILLOWS CONSULTING  
25 COMPANY,

26 Defendants.

CASE NO. 15CR2821-BAS

**DEFENDANTS RONALD GRUSD,  
M.D., CALIFORNIA IMAGING  
NETWORK MEDICAL GROUP,  
AND WILLOWS CONSULTING  
COMPANY'S MOTION TO  
STRIKE GOVERNMENT  
SENTENCING EXHIBIT 7;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

**DECLARATION OF RONALD  
GRUSD, M.D.**

**DECLARATION OF JOHN S.  
GORDON**

Sentencing Date: June 18, 2018  
Time: 9:00 a.m.  
Ct: 4B

TO PLAINTIFF UNITED STATES OF AMERICA AND ITS COUNSEL OF  
RECORD:

Defendants RONALD GRUSD, CALIFORNIA IMAGING NETWORK  
MEDICAL GROUP, and WILLOWS CONSULTING COMPANY (collectively,  
“Defendants”) hereby jointly move this Court for an order striking Government  
Sentencing Exhibit 7 (Dkt. 322-1) and precluding its use at sentencing or elsewhere  
in this case. Defendants request that any hearing on this motion be conducted at the  
time of sentencing, currently set to be held at the United States District Courthouse,  
Courtroom 4B, 221 West Broadway, San Diego, CA, on June 18, 2018 at 9:00 a.m.

This Motion to Strike is based on the attached Memorandum of Points and  
Authorities; the separately filed Declaration of Defendant Ronald Grusd, M.D. in  
Support of Defendants Ronald Grusd, M.D., California Imaging Network Medical  
Group, and Willows Consulting Company’s Motion to Strike; the separately filed  
Declaration of John S. Gordon in Support of Defendants Ronald Grusd, M.D.,

California Imaging Network Medical Group, and Willows Consulting  
Company’s Motion to Strike, all the files and records in the case, and any evidence  
or argument that might be presented at any hearing on this motion.

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1 DATED: June 15, 2018

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

4 By /s/ John S. Gordon

5 John S. Gordon

6 Attorneys for Defendant

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. PRELIMINARY STATEMENT**

Defendants Ronald Grusd, M.D., California Imaging Network Medical Group (“CIN”), and Willows Consulting Company (“Willows”) (collectively, “Defendants”) hereby move to strike from the record Government Sentencing Exhibit 7, and to preclude any reference to it in this case. That document is protected by the marital communications privilege, which precludes any use of it in this case. Thus, it should not be referred to or considered at sentencing or any other proceeding in this case.

Sentencing Exhibit 7, a private letter written by Helen Grusd, Ph.D. (referred to hereinafter as “Helen”) to her husband Defendant Ronald Grusd, M.D., was seized by the Government during a search of Dr. Grusd’s personal office following his arrest in November 2015. He had kept the letter confidential; it was taken from his personal office—a private area within his medical office space. The Government’s submission of Sentencing Exhibit 7 (without prior notice or Court authorization), was improper, and any consideration of this privileged document would violate federal common law as well as Federal Rule of Evidence 501.

For the reasons stated below, Defendants respectfully request that the Court strike Sentencing Exhibit 7 from the record, and preclude any reference to, or consideration of, it during Defendants’ sentencing or any other proceeding in this case.

**II. GOVERNMENT SENTENCING EXHIBIT 7 IS A CONFIDENTIAL DOCUMENT PROTECTED BY THE MARITAL COMMUNICATIONS PRIVILEGE**

The scope of evidentiary privileges in criminal cases is governed by federal common law. Fed. R. Evid. 501 provides that the various privileges are to be “interpreted by the United States courts in the light of reason and experience.” The

1 federal courts have recognized two marital privileges on that basis, including the  
 2 marital communications privilege, pursuant to which “[c]ommunications between  
 3 the spouses, privately made, are generally assumed to have been intended to be  
 4 confidential, and hence they are privileged . . . .” *United States v. Montgomery*, 384  
 5 F.3d 1050, 1056 (9th Cir. 2004). The privilege “(1) extends to words and acts  
 6 intended to be a communication; (2) requires a valid marriage; and (3) applies only  
 7 to confidential communications, *i.e.*, those not made in the presence of, or likely to  
 8 be overheard by, third parties.” *Id.*<sup>1</sup>

9 Because all three prongs of the privilege analysis are met here, because the  
 10 government cannot carry its burden of proving otherwise, and because no  
 11 recognized exceptions to the privilege apply, Sentencing Exhibit 7 is protected from  
 12 disclosure and use by the marital communications privilege.

13 **A. Sentencing Exhibit 7 Satisfies All Requirements for a Privileged**  
 14 **Communication**

15 Helen’s letter to Dr. Grusd easily satisfies the three requirements of the  
 16 marital communication privilege. Dr. Grusd and Helen were married at the time the  
 17 letter was provided to Dr. Grusd and they have remained married. The letter plainly  
 18 constitutes “words or acts intended to be a communication” in the context of a  
 19 “valid marriage.”

20 Helen’s letter also satisfies the third prong of the privilege, as it bears all the  
 21 trappings of a “confidential communication[,] not made in the presence of [] third  
 22 parties.” *See Montgomery*, 384 F.3d at 1056. Helen provided the Letter to Dr.  
 23 Grusd in the privacy of their shared residence, and he is unaware of anyone besides

24 <sup>1</sup> Strong policy considerations underlie the marital communications privilege.  
 25 “The basis of the immunity given to communications between husband and wife is  
 26 the protection of marital confidences, regarded as so essential to the preservation of  
 27 the marriage relationship as to outweigh the disadvantages to the administration of  
 28 justice which the privilege entails.” *Wolfe v. United States*, 291 U.S. 7 (1934); *see*  
 also *United States v. White*, 974 F.2d 1135, 1138 (9th Cir. 1992) (“The public policy  
 interests in protecting the integrity of marriages and ensuring that spouses freely  
 communicate with one another underlie the marital communications privilege.”).

1 himself and his wife ever knowing of the Letter's existence before it was seized by  
 2 the Government at the time of his arrest in November 2015. Grusd Decl. ¶¶ 1-2.  
 3 The letter was found at and seized from Dr. Grusd's personal office—his private  
 4 space. Grusd Decl. ¶ 2. People were not allowed to look at his private papers in his  
 5 personal office. *Id.* He did not intentionally leave the letter out in plain sight for  
 6 someone to see and he never led anyone to believe that it was permissible to read the  
 7 letter. *Id.* Dr. Grusd always treated the letter as confidential and intended that it  
 8 remain confidential. Grusd Decl. ¶ 3.

9       The Ninth Circuit has made plain that “the nature of the communication”  
 10 matters: “a handwritten letter from a wife to a husband that was left [for him to  
 11 find]... is [a communication] of the kind likely to be confidential.” *See*  
 12 *Montgomery*, 384 F.3d at 1057. In *Montgomery*, the court reasoned that the  
 13 communication—a handwritten letter to a defendant from his wife, addressed to  
 14 defendant by name, seized from the couple's home during the execution of a  
 15 warrant, and warning defendant that his business activities were illegal—was  
 16 confidential pursuant to the marital communications privilege. The *Montgomery*  
 17 panel ruled that the privilege remained intact, and that the district court erred in  
 18 admitting the letter (1) even though the wife's letter was left for the husband on the  
 19 kitchen counter at a time when the couple's children resided in the home and could  
 20 have entered the kitchen, and (2) notwithstanding the fact that defendant's wife  
 21 testified at trial that she had actually hoped that defendant would communicate the  
 22 substance of her letter (about the illegality of his business) to his sister as an  
 23 admonition. *Id.* at 1056-1059. So, too, Helen's handwritten note to her husband,  
 24 addressing him by name, is on its face presumptively confidential.

25       **B. The Government Cannot Carry Its Burden to Overcome the**  
 26       **Presumption of Confidentiality and Privilege**

27       The Government bears the burden of overcoming the presumption that  
 28 Sentencing Exhibit 7 is confidential. “Marital communications are presumptively



1 confidential. It is therefore necessary for the party seeking to avoid the privilege to  
 2 overcome the presumption.” *In re Grand Jury Investigation*, 603 F.2d 786, 787–88  
 3 (9<sup>th</sup> Cir. 1979), *citing Blau v. United States*, 340 U.S. 332, 333 (1951); *see also*  
 4 *Montgomery*, 384 F.3d at 1056 (“The government bears the burden of showing that  
 5 the communication was not intended to be confidential.”). Here, the Government  
 6 cannot carry this burden.

7 *First*, the topics discussed in Sentencing Exhibit 7 make plain that the letter  
 8 was intended to be confidential. The assertions in Helen’s letter are not of a sort  
 9 typically disclosed by a spouse to third parties. They comprise the type of private  
 10 discussions (whether the allegations by one spouse against the other are true or  
 11 false) which the marital communication privilege was designed to encourage and  
 12 protect. *See Blau*, 340 U.S. at 333–34 (petitioner was entitled to assert marital  
 13 communication privilege to excuse him from testifying about wife’s  
 14 communications, where wife’s communication to petitioner—her whereabouts—  
 15 was “of the kind likely to be confidential.”). Helen’s assertions in the letter (at least  
 16 the ones summarized in the government’s typed summary of excerpts from the  
 17 letter), are clearly “of the kind likely to be confidential.”<sup>2</sup>

18 *Second*, even if any of the assertions in Sentencing Exhibit 7 related to any  
 19 aspect of this case, whether work-related or otherwise, that would not defeat the  
 20 presumption that the letter was intended to be confidential. In *In re Grand Jury*  
 21 *Investigation*, 603 F.2d 786, the court held that the government failed to rebut the  
 22 presumption of confidentiality of the communications between defendant and his

23 <sup>2</sup> Nor has Dr. Grusd waived his privilege by any opaque references to the  
 24 substance of Sentencing Exhibit 7. *See SEC v. Lavin*, 111 F.3d 921, 933 (D.C. Cir.  
 25 1997) (holding that defendants did not waive the confidentiality of their marital  
 26 communication by submitting selective disclosures of the transcripts of confidential  
 27 communications to court; the defendants “sought only to establish the privilege by  
 28 providing highly probative information regarding [their] assumptions with regard to  
 the nature of their conversations,” using the disclosures only as a shield and not as a  
 sword). As in *Lavin*, defendants here make only the most general references to the  
 privileged document, merely in the interests of protecting their privilege. This does  
 not constitute waiver.

1 wife regarding the details of defendant's work. In reversing the ruling below, the  
 2 Ninth Circuit reasoned that communications between defendant and his wife  
 3 regarding his work were "an area presumptively protected by the marital  
 4 communications privilege and the Government did not overcome the presumption"  
 5 that the communications were confidential. *Id.* at 788. The court continued:

6       The prosecutor argued that [defendant] had no expectation of privacy with  
 7       respect to his job duties because those duties were carried on at a place of  
 8       business with a number of employees, and, therefore, the facts concerning his  
 9       employment were not private facts protected by the marital communications  
 10      privilege. *The argument misses the point. His job may have been in the*  
 11      *public eye, but his conversations with his wife were presumptively*  
 12      *confidential.* The Government had the burden of showing that his  
 13      conversations with his wife were not conducted in private. The fact that other  
 14      employees or members of the public could testify about [defendant's] job  
 15      responsibilities is irrelevant to the existence of the marital communications  
 16      privilege.

17 *Id.* at 788 n.1 (emphasis added); *see also Montgomery*, 384 F.3d 1050 (wife's letter  
 18 regarding illegal activities of defendant's home rental business was protected by  
 19 marital communications privilege).

20 Likewise here, Helen's communications to her husband do not lose the  
 21 imprimatur of confidentiality due to any of the contents in the letter itself.

### 22 **III. GOVERNMENT SENTENCING EXHIBIT 7 SHOULD NOT BE** 23 **CONSIDERED IN DEFENDANTS' SENTENCING**

24       The marital communications privilege applies at the criminal sentencing  
 25 stage. *See* Fed. R. Evid. 1101(c) ("The rules on privilege apply to all stages of a  
 26 case or proceeding.").

27       As set forth in Section II, *supra*, Sentencing Exhibit 7 is a confidential  
 28 document squarely protected by the marital communications privilege. This  
 privilege must be observed at Defendants' sentencing, as prescribed by the Federal  
 Rules of Evidence.

1 **IV. CONCLUSION**

2 For all of the reasons above, as well as any other arguments that might be  
3 made at the sentencing hearing on June 18, 2018, Defendants respectfully request  
4 that the Court strike Government Sentencing Exhibit 7 as a privileged marital  
5 communication, and preclude any reference to or consideration of it at sentencing or  
6 any further proceeding in this case.

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8  
9 DATED: June 15, 2018

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

10  
11  
12 By /s/ John S. Gordon

13 John S. Gordon

14 Attorneys for Defendant  
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